

PART IV RULES
SUPREME COURT – NEW YORK COUNTY
DEDICATED TRIAL DIVISION
HON. JUSTICE FRANK P. NERVO

Chambers

80 Centre Street, Room 329
New York, NY 10013
(646) 386-5707

Courtroom & Part Clerk

Part IV
80 Centre Street, Room 327
(646) 386-3580
SFC-Part4-Clerk@nycourts.gov

Effective: May 15, 2023

I. General Rules

A. Failure to abide by the Court’s rules may result in immediate expulsion from the Courtroom, sanctions, or other consequences, as provided by law and in the Court’s sole discretion.

B. Court Personnel.

Principal Court Attorney -- Mr. Collins
Senior Court Clerk -- Ms. Crawford
Senior Court Officer -- Officer Vobis

C. Decorum.

- i.** No eating, drinking, or gum chewing in the courtroom, with the exception of water in a sealed container.
- ii.** No reading newspapers or other material in the courtroom.
- iii.** Those appearing before the Court are reminded of proper courtroom decorum and shall address all parties and court personnel respectfully. Do not at any time address the Court, staff, or jurors by first name, or with undue familiarity.
- iv.** **The use of electronic equipment in the courtroom is *prohibited*. Only counsel seated at the counsel table, with permission of the Court, may use electronic equipment. All use by others, in the absence of explicit permission by the Court, is prohibited.**

D. NYSCEF Filings. All counsel and parties are advised that Chambers does not receive notice of NYSCEF filings, nor monitor same. Matters counsel or pro-se parties wish to bring to the Court’s attention shall be brought via letter to Judge.

II. Pro-se Parties

A. Communication.

- i. Ex-parte.** Parties appearing pro-se are reminded that ex-parte communication with the Court, including telephone calls to chambers, is *strictly prohibited*. Do not contact chambers via telephone.
- ii. Legal Advice and Inquiries.** Chambers, chambers staff, and the Part Clerk are prohibited from providing legal advice and will not answer inquiries seeking same.
- iii. Scheduling Inquiries.** The Part Clerk may answer questions regarding scheduling and appearances and may be contacted via telephone and email, as listed under Courtroom contact information on the first page of these rules.

B. Help Center. Pro-se parties are encouraged to contact the Court's Help Center for questions and assistance. The Court's Help Center may be accessed online at www.nycourthelp.gov or via telephone at 646-386-3025 and 646-386-3120.

III. Transferred Matters.

- A. Dates vacated.** Where a matter has been transferred to the Part, administratively or by order, any future appearance date is vacated.
- B. Motions.** Be advised that administratively transferred motions are transferred *en masse*. Counsel may inquire as to the status of a transferred motion once with the Part Clerk via telephone (646-386-3580). Successive inquiries regarding the status of transferred motions are prohibited as same needlessly squanders the Court's resources. Do NOT inform chambers or the Part of transferred motions.
- C. Orders to Show Cause.** Parties with a previously signed order to show cause which has been transferred to the Part prior to the return date of such application shall contact the Part via a joint Letter to Judge with courtesy copy to chamber, in accordance with section V. B. of these rules.
- D. Conferences.** Parties with a previously scheduled conference appearance in another Part shall file a proposed discovery order in compliance with section VIII. B. i. of these rules; and only in extraordinary cases shall the parties file a request for conference in compliance with section VIII. B. iii. of these rules.
- E. Note Of Issue.** The Court will consider any request to extend the note of issue (NOI) deadline contemporaneously with its review of the proposed discovery order.
- F. Oral Argument.** Upon transfer to the Part, any previously scheduled oral argument date is vacated. The Court takes motions on submission, absent order otherwise; counsel may request rescheduling of oral argument in accordance with section VI. B. and V. B. of these rules.
- G. Hearings, Inquests, Trials.** Parties with a previously scheduled inquest, hearing, or trial appearance in another Part shall advise chambers of the transfer by letter to Judge, filed to NYSCEF with courtesy copy to chambers in accordance with section V. B. of these rules.

IV. Family Court Act Article 5-C (“Child-Parent Security Act”) Matters.

- A. General Procedures.** The Court reviews Family Court Act Article 5-C Matters, including anonymous caption applications, via applications filed with the Ex-parte Office of the Clerk’s Office. Counsel shall contact the Ex-parte Office of the Clerk’s Office for guidance in filing same.
- B. Anonymity Orders.** Upon issuance of an order directing the matter proceed under an anonymous caption, counsel shall serve same upon the Clerk’s Office. Neither Chambers nor the Part Clerk serves anonymous caption orders upon the Clerk of the Court. Counsel shall contact the Clerk’s Office for further guidance regarding anonymous caption orders. Do not contact Chambers regarding effectuating an anonymous caption order.
- C. Post-Birth Amended Orders.** All counsel and parties are reminded that chambers is not notified of filings via NYSCEF. Where a proposed amended order is filed following the birth of the child, counsel shall serve a courtesy copy to chambers via mail or hand-delivery contemporaneously with a brief Letter to Judge, in accordance with section V. B. of these rules, explaining same. Post-birth amended orders will be neither received nor reviewed by the Court, absent service of a courtesy copy to Chambers, as outlined above.
- D. Service of Signed Orders.** Neither Chambers nor the Part Clerk serve copies of signed orders, including anonymity and parentage orders; this includes internal and external service upon any party or non-party such as agencies, offices, or governments. Counsel shall contact the County Clerk’s Office for guidance regarding the service of signed orders, including service of orders upon offices/agencies issuing birth certificates.
- E. Copies of Signed Orders.**
- i. Courtesy copies.** Courtesy copies of signed parentage orders are available by appointment only. Contact the Part Clerk via email to request a courtesy copy for an order of parentage and arrange a time to retrieve same from the Courtroom. Courtesy copies will not be provided absent a confirmed appointment.
 - ii. Official copies.** Official copies of orders, including copies bearing an official seal, are provided only by the County Clerk; contact the County Clerk’s Office for further guidance.

V. Communications with Chambers

A. *Ex Parte* Communication. *Ex parte* communications are strictly prohibited.

B. Letters. Except as provided below, communication with Chambers must be by letter, which shall not exceed two-pages in length, and shall be filed via NYSCEF with courtesy copy mailed or hand-delivered to Chambers. Copies of correspondence between counsel shall not be sent to the Court, except as an exhibit to a letter. Only complying letters will be considered. Do not email letters to chambers or the Part Clerk, except in emergent circumstances or where directed otherwise by the Court.

C. Telephone Calls. For scheduling, calendar, and general inquiries contact the Part Clerk at (646) 386-3580 or SFC-Part4-Clerk@nycourts.gov. For urgent matters, contact Chambers at (646) 386-5707. Chambers does not hold telephone conferences, do not contact Chambers seeking a telephone conference or for discovery relief, including relief related to depositions. All requests for conference shall comply with section VI. B. of these rules, below. Motions for discovery relief shall comply with section IV. D. of these rules, below.

D. Emails. The Part Clerk may be emailed at SFC-Part4-Clerk@nycourts.gov. Do not email chambers, unless directed otherwise.

E. Hand Deliveries. For hand-delivered regular mail, same shall be left as directed by the Court Officers in the Lobby of 80 Centre Street. For hand-delivered urgent material, including material requiring immediate attention, same shall be marked urgent and shall be left with the Part Clerk, Ms. Crawford, in the Courtroom.

F. Faxes. Communication by fax is discouraged. Prior to sending a fax, contact the Part Clerk at (646) 386-3580 or SFC-Part4-Clerk@nycourts.gov.

G. Requests for Adjournments.

i. Hearings, Inquests, and Trials. Adjournment of a hearing, inquest, or trial is solely by Court order. Parties may not adjourn same without the Court's advance permission; counsel are prohibited from adjourning a hearing, inquest, or trial date by stipulation. Purported adjournment without Court permission shall be a nullity. To request an adjournment of a hearing, inquest, or trial, counsel shall confer and file a single joint letter to Judge, via NYSCEF with courtesy copy mailed or hand delivered to chambers. The letter request for adjournment must provide: (1) the original hearing, inquest, or trial date, (2) any prior adjournments, (3) any future Court appearances scheduled in the matter, (4) the reason(s) underlying the adjournment request, and (5) counsels' joint availability for 20-days following the requested adjournment date. Absent an emergency, adjournment requests shall be made at least 14-days prior to the scheduled date. For emergency adjournments, contact the Part Clerk at 646-386-3580.

- ii. Oral Argument.** Adjournment of oral argument is solely by Court order. Parties may not adjourn same without the Court's advance permission; counsel are prohibited from adjourning oral argument by stipulation. Purported adjournment without Court permission shall be a nullity. To request an adjournment of oral argument counsel shall confer and file a single joint letter to Judge, via NYSCEF with courtesy copy mailed or hand delivered to chambers. The letter request for adjournment must provide: (1) the original argument date, (2) any prior adjournments of argument, (3) any future Court appearances scheduled in the matter, (4) the reason(s) underlying the adjournment request, and (5) counsels' joint availability for 20-days following the requested adjournment date. Absent an emergency, adjournment requests shall be made at least 14-days prior to the scheduled date. For emergency adjournments, contact the Part Clerk at 646-386-3580.
- iii. Motions, Returnable in Room 130.** Adjournment requests shall comply with that Office's rules and procedures, as provided by "Motions & Special Proceedings By Notice of Motion/Petition" available on the Court's website. Inquiries regarding motions returnable in Room 130 must be directed to the Motion Support Office at (646) 386-3030.
- iv. Motions, Returnable in Part IV.** Adjournment of motions returnable in Part IV is solely by Court order. Requests for adjournments of motions returnable in Part IV must be made in writing and filed via NYSCEF with courtesy copy mailed or hand delivered to chambers. This includes proposed adjournment stipulations. The letter request for adjournment must provide: (1) the original return date, (2) any prior adjournments, (3) any future Court appearances scheduled in the matter and (4) the reason(s) underlying the adjournment request. Absent an emergency, requests to adjourn motions returnable in Part IV shall be made at least 5-days prior to the return date.
- v. Conferences.** Adjournments of conferences shall comply with section VIII. C. of these rules, below.
- vi. Extension of Note of Issue.** The note of issue will be extended only by motion, except for transferred matters under section III. D. of these rules. For further directives regarding the note of issue, see section IX. of these rules below.
- vii. Extension of Deadlines & Relief from Order.** Parties seeking relief from a prior order of the Court or extension of Court-imposed deadlines, including conference orders, shall file a motion for same. Letter motions will not be considered.
- viii. Dates unaffected.** Parties are reminded adjournments do not affect any date in any order, absent direction otherwise by the Court.

- H. Requests to So-Order.** Parties' request to so-order any document shall be filed to NYSCEF with courtesy copy mailed to Chambers and must include a letter outlining the underlying reasons for the request; such letter shall comply with section VI. B. of these rules and shall indicate whether such request is on consent of other parties. Non-complying submissions will not be considered.
- I. Copies of Orders.** Orders or decisions shall be obtained from the County Clerk's office, or NYSCEF, if the matter is e-filed. Chambers and the Courtroom will not provide copies, except for Family Court Act Article 5-C ("Child-Parent Security Act") orders under section IV. of these rules.

VI. Motions

- A. Letter Motions.** Letter motions are *prohibited* and will not be considered.
- B. Oral Argument.** The Court takes motions on submission, unless stated otherwise. Parties may request oral argument by letter, in accordance with section V. B. of these rules. Should oral argument be granted, the Court will notify the parties; the Court will not notify the parties if the request for oral argument has been denied. Failure to appear at oral argument may result in sanctions, in the Court's discretion. The Court may schedule argument *sua sponte*, in its discretion.
- C. Pre-motion Conferences & Pre-motion Permission.** The Court does not hold pre-motion conferences, nor does it require pre-permission to file motions absent Court order otherwise. Where a matter has been transferred to this Part from a Part where pre-permission is required by Part Rules, pre-permission to file motions will not be required in this Part.
- D. Discovery Relief.** Applications to resolve discovery disputes shall be made by motion, except in cases of genuine urgency, where statute requires, or where a stay has been sought, in which case the application may be brought by order to show cause in accordance with 22 NYCRR § 202.8-d. Counsel are reminded of their obligations to comply with 22 NYCRR § 202.20-f prior to filing a motion seeking discovery relief. Counsel and parties are reminded that strict adherence to discovery obligations and deadlines is required, pursuant to 22 NYCRR § 202.20-e. Applications to extend discovery deadlines shall be made as soon as practicable and returnable prior to the discovery deadline. Applications made after a discovery deadline may be denied for untimeliness, absent extraordinary circumstances and upon good cause shown, in the Court's discretion. *The Court will not entertain telephone conferences for discovery disputes, including those related to depositions.* Counsel are reminded that letter motions are prohibited.
- E. Adjournments.** Requests to adjourn a motion shall comply with sections V. G. iii. and V. G. iv. of these rules.
- F. Withdrawal.** Parties seeking to withdraw a motion returnable in Part IV on consent must file the signed stipulation to NYSCEF and immediately notify the Part Clerk at (646) 386-3580 or SFC-Part4-Clerk@nycourts.gov. *Failure to timely notify the Part Clerk of a motion's withdrawal may result in sanctions.* Do not notify Chambers or the Part Clerk of the withdrawal of motions returnable in Room 130.
- G. Status & Anticipated Decision Date.** The Court will not provide the anticipated decision date of a motion, parties and counsel are prohibited from so inquiring. Where a decision has not been rendered within 60-days of the return date, or date the motion was transferred to Part IV, counsel may contact the Part Clerk to inquire whether the motion has been marked submitted.

VII. Appearances by Counsel

A. Authority and Familiarity. Counsel appearing before the Court must be familiar with the matter, fully prepared to discuss the issue(s), and authorized to resolve the issue(s) upon which their appearance is predicated. This includes appearances at Court conferences. The appearance by counsel without authority or familiarity may be deemed a nullity and the appearance defaulted.

B. Conferences. Counsel are reminded of their duty, pursuant to 22 NYCRR § 202.23, to confer and consult with counsel for all parties prior to Court conferences, including regarding outstanding discovery. In addition, counsel appearing in this Part shall provide a proposed conference order addressing outstanding issues, including discovery, where they have agreed to the resolution of same, pursuant to section VIII. B. of these rules.

C. Virtual Appearances.

- i.** Counsel appearing at virtual proceedings are reminded that a virtual proceeding is, in fact, a proceeding before the Court and counsel are expected to be dressed professionally.
- ii.** Counsel and parties appearing at virtual conferences are prohibited from doing so while operating a motor vehicle or other machinery. Appearing while operating a motor vehicle or machinery shall result in immediate removal from the virtual proceeding, constitute a failure to appear, and constitute waiver of any relief granted. The safety of the public requires as much.

VIII. Conferences

A. Virtual Appearances. Conferences are held virtually via Microsoft Teams, unless stated otherwise, and are scheduled for a time certain. Counsel must appear promptly for conferences, the failure to timely appear may result in dismissal, an order entered on default, or other sanction, as appropriate and in the Court's discretion.

B. Requests for Conferences.

- i. The parties are encouraged to file a proposed order addressing all outstanding discovery in lieu of requesting a conference. The parties shall file such proposed order, along with a single joint letter to Judge, via NYSCEF with courtesy copy to chambers in compliance with section V. B of these rules.
- ii. Absent extraordinary circumstances, this Part does not hold compliance conferences. Discovery disputes shall be resolved by motion, in compliance with section VI. D. of these rules.
- iii. In extraordinary circumstances where the parties believe a conference is necessary, the parties shall request same by letter in compliance with section V. B. of these rules. All requests for conferences shall: (1) be filed via NYSCEF with courtesy copy via mail to chambers; (2) contain a proposed order to the extent the parties have reached agreement on any issue; and (3) contain a single joint letter to Judge outlining the reason(s) underlying the request and the parties' positions on any issues where agreement cannot be reached. The Court may, upon review of the letter and proposed order, issue a discovery order in lieu of holding the requested conference. Noncomplying requests for conferences will not be considered, and the failure to provide a proposed discovery order or joint letter may result in the Court issuing a discovery order *sua sponte*. As a matter of reference, preliminary conference forms are available online at: https://ww2.nycourts.gov/courts/1jd/supctmanh/preliminary_conf_forms.shtml.

C. Adjournments of Conferences.

- i. **Preliminary Conference.** The parties may adjourn a preliminary conference once for no more than 21-days. Parties seeking to adjourn a preliminary conference on consent must file a stipulation of adjournment to NYSCEF with courtesy copy mailed to Chambers; the stipulation must provide counsel's availability for 20 days following the requested adjourned date. Adjournments must be filed at least 5-days prior to the conference date, unless directed otherwise. Further preliminary conference adjournments will be granted only with advance approval of the Court, and must be sought by a letter in compliance with section V. B. of these rules.
- ii. **Compliance and Status Conference.** All adjournments of compliance or status conferences will be granted only with prior permission of the Court

and must be sought by a letter, in compliance with section V. B. of these rules, at least 5-days prior to the conference date.

- iii. Dates unaffected.** Parties are reminded adjournments do not affect any date in any order, including prior conference orders, absent direction otherwise by the Court.

IX. Note of Issue (NOI)

The deadline to file the note of issue will be set at the first conference practicable.

- A. Extension of Deadline.** Applications to extend the note of issue deadline shall be made by motion, returnable before the deadline date. In no event shall such motion be made after the note of issue deadline, absent extraordinary circumstances and for good cause shown. Absent extraordinary circumstances, the Court will not extend the note of issue deadline at subsequent Court conferences. The parties are prohibited from extending the note of issue deadline by stipulation, absent Court permission. The parties are reminded that section VI. A. of these rules prohibits letter motions and includes requests to extend the note of issue by letter.
- B. Post-note Discovery.** There shall be no further discovery after the note of issue date, and the Court will not enforce post-note of issue discovery. Failure to timely file a note of issue may result in the dismissal of the action.
- C. Vacatur.** A party may seek to vacate a prematurely filed note of issue by motion within 20-days from the service of a copy of the note of issue, pursuant to 22 NYCRR § 202.21(e).

X. Jury Selection

- A. Supervised Jury Selection.** Where the Court supervises jury selection, the Court will determine the method used to ensure assemblage of a fair and impartial jury (*see generally* McKinney New York Rules of Court § 220.1; Appendix E – Procedures for Questioning, Challenging and Selecting Jurors).
- B. Unsupervised Jury Selection.** Where the Court does not supervise jury selection, it may nevertheless direct selection occur under procedures necessary to ensure assemblage of a fair and impartial jury.
- C. Non-Designation of Alternate Jurors.** Where more than six jurors are selected, they shall not be designated as regular or alternate jurors. Upon the conclusion of the Court's charge to the jury, if more than six jurors remain, the Clerk of the Part shall randomly draw the names of six jurors to serve as regular jurors.
- D. Dismissal of Alternate Jurors.** Alternate jurors, if any, shall not be dismissed upon regular jurors retiring for deliberations. Alternate jurors shall remain sequestered in a separate jury room until: being called upon to serve as a regular juror, the matter's resolution by verdict or settlement, or as otherwise dismissed by the Court.
- E. Common Issues and Objections.** The below issues and objections commonly arise during jury selection. The below list is not exhaustive, but merely outlines the most common objections and this Court's usual position with respect to same. Counsel are advised of the Court's general positions listed below, and such positions are subject to modification in the Court's discretion in appropriate circumstances.
- i. There shall be no mention of facts, other than necessary to determine a potential juror's ability to be fair and impartial.
 - ii. There shall be no mention of the law, other than confirming from a potential juror that they will follow the law as provided by the Court, irrespective of whether they agree with such law.
 - iii. There shall be no mention of damages or dollar amounts sought other than in general terms, such as: a juror's acceptance of the concept of money damages for personal injuries; a juror's confirmation they will award appropriate damages where warranted and based upon the evidence; a juror's confirmation that, in the appropriate case and where warranted based upon the evidence, appropriate damages may be millions of dollars; a juror's confirmation that, in the appropriate case and where warranted based upon the evidence, appropriate damages may be less than sought by plaintiff, including zero dollars.
 - iv. Discussion of injuries may be addressed in general terms to determine a potential juror's familiarity with such injury/surgery/procedure and the effect of same. There shall be no detailed discussion of injuries/surgeries/procedures.

- v. Where a trial has been bifurcated, and the same jury is anticipated to determine liability and, if reached, damages, counsel may address the issue of injuries and damages during jury selection.

F. Timeliness of objections. All concerns or anticipated objections shall be brought to the Court's attention as early as possible; delays may constitute waiver, as determined by the Court.

XI. Trial Procedures

- A. Pre-trial Conference.** Counsel shall contact the Part Clerk to schedule a pre-trial conference upon the matter being assigned to Part IV for trial. The pre-trial conference may occur in-person or via Microsoft Teams, in the Court's discretion. Prior to appearing at the pre-trial conference, counsel shall provide the following, in a single email, to the Part Clerk at SFC-Part4-Clerk@nycourts.gov:
- i. Marked pleadings
 - ii. Copies of exchanged medical narratives
 - iii. Copies of all CPLR § 3101(d) exchanges
 - iv. List and schedule of witnesses (including the expected length of testimony as required by 22 NYCRR § 202.37)
 - v. Proposed jury instructions and request to charge
 - vi. Proposed verdict sheet
- B. Wrongful Death.** Plaintiff's counsel shall provide a list of distributees under the EPTL contemporaneously with the proposed verdict sheet at the pre-trial conference.
- C. Settlement.** Counsel shall advise the Court of settlement negotiations, including whether pre-trial settlement conferences will be productive, at their first appearance in Part IV.
- D. Proposed Verdict Sheet.** The Court will NOT submit general verdict questions to the jury under any circumstance and parties are prohibited from submitting proposed verdict sheets with same (*Landau v. Balbona Restaurant Corp.*, 168 AD3d 424 [1st Dept 2019]; *Davis v. Caldwell*, 54 NY2d 176 [1981]).
- E. Motions in limine.** Motions in limine shall be made at the pre-trial conference, unless directed otherwise by the Court. Untimely motions in limine may be rejected or denied by the Court. Motions arising during trial shall be made as soon as reasonably practicable.
- F. Exhibits.** Counsel shall pre-mark all evidence to which there is no objection in advance of trial (22 NYCRR § 202.34).
- G. Bifurcation.** The Court will determine whether the trial will be bifurcated prior to opening statements. Counsel are reminded that bifurcation is encouraged by § 202.42 of the Uniform Rules (*see also Faber v. New York City Housing Authority*, 227 AD2d 248 [1st Dept 1996]).
- H. Objections.** "Speaking objections" are prohibited in jury trials.
- I. Trial Material.** The Court does not store trial material. Any document or material left in the courtroom will be discarded at the close of the proceeding.